IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs May 20, 2009

STATE OF TENNESSEE v. KATIE ANN WALSH

Direct Appeal from the Criminal Court for Sullivan County
Nos. S52014, S52825 R. Jerry Beck, Judge

No. E2008-01899-CCA-R3-CD - Filed October 28, 2009

The appellant, Katie Ann Walsh, challenges the trial court's imposition of an incarcerative sentence, arguing that she should have been granted an alternative sentence. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

Joseph F. Harrison, Blountville, Tennessee, for the appellant, Katie Ann Walsh.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Janine Myatt, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On March 9, 2007, the appellant pled guilty to felony failure to appear, violation of a habitual traffic offender order, and reckless endangerment with a deadly weapon. She was sentenced as a Range I standard offender to one year for each offense, with two of the sentences to be served consecutively for a total effective sentence of two years. The trial court denied alternative sentencing and ordered the appellant to serve her sentence in the Tennessee Department of Correction. On December 21, 2007, the appellant was released from the Tennessee Department of Correction and place on probation pursuant to Tennessee Code Annotated section 40-35-501(a)(3) and (a)(5).[1]

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[1] Tennessee Code Annotated section 40-35-501(a)(5) and (a)(5) provides that generally, inmates with felony sentences of two years or less shall, upon reaching their release eligibility date, have the remainder of their original (continued...)

Thereafter, on May 16, 2008, a warrant was filed against the appellant, alleging that she violated the terms of her probation by failing to obey laws and municipal ordinances, failing to immediately report all arrests and traffic violations, and using an intoxicant to excess. Specifically, the warrant alleged that on April 24, 2008, the Bristol Police Department charged the appellant with public intoxication and that the appellant did not report the arrest to her probation officer until May 8, 2008.

At the probation revocation hearing, the appellant pled guilty to the probation violation and stipulated the accuracy of the allegations in the warrant. The appellant asked for and was granted permission to put on mitigation testimony. The appellant testified that she was forty-one years old, was not married, and lived in a public housing apartment in Springdale. She said that she had a fourteen-month-old son who was in the custody of Social Services of Tennessee. She said that her son was taken from her when she was hospitalized and placed in Woodridge. The appellant stated that a hearing was scheduled to determine whether the State could terminate her parental rights or if she could regain custody of her son.

The appellant said that she was released from confinement near the Christmas holidays. The appellant said she had difficulty finding a job, but in March she obtained a job at a Holiday Inn and worked there four months. She said that she had a biweekly net income of $133 and that $120 of that amount was paid for child support. She said that because she could not drive and did not have many friends or family members to assist her, she frequently walked to Blountville for visitation with her son or for meetings with her probation officer.

The appellant asserted that other than the public intoxication offense, she had not committed any other offenses while on probation. She said that her drug tests were "clean" and that she had turned her life around. She said that one day during her probation, she was with friends when she took Sudafed sinus medication and drank beer. She stated that she drank only three beers "that whole day." After consuming the beer and medication, the appellant attempted to walk to her brother's residence. While walking, she was stopped by police and arrested for public intoxication. The appellant maintained that she ordinarily would not have been intoxicated after consuming three beers but that the alcohol had interacted poorly with the sinus medication.

The appellant said that she was sexually molested by her father and that she grew up alone "on the streets." She stated, "This is the first time I've ever gotten this far. This is the first time I've ever had a job or a home or anything." She acknowledged that she had "a few" past alcohol-related offenses. The appellant asked the court for mercy, asserting, "I have worked so hard to change my life and have my child." The appellant said she was willing to abstain from alcohol in the future, but she acknowledged that she had not attended any substance abuse treatment since her release.

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[1](...continued)
sentence suspended and that the suspension "shall be to probation supervision under terms and conditions established by the department."

At the conclusion of the hearing, the trial court noted that the appellant "is truly a tragic case." The court observed that the appellant had a traumatic childhood. However, the court noted that the appellant had a conviction for arson in Ohio and numerous prostitution convictions in Florida. Additionally, the court said that the appellant was a "long-term alcoholic" with at least ten public intoxication convictions in her past. The court stated that the appellant's most recent public intoxication offense was not an isolated incident and that in its opinion, "she's almost reached the hopeless standpoint." Therefore, the court ordered her to serve her sentence in confinement. On appeal, the appellant challenges the trial court's decision to impose a sentence of confinement and deny alternative sentencing.

II. Analysis

Upon finding by a preponderance of the evidence that an appellant has violated the terms of her probation, a trial court is authorized to order that appellant to serve the balance of her original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310 and -311(e) (2006); State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Furthermore, probation revocation rests in the sound discretion of the trial court and will not be overturned by this court absent an abuse of that discretion. State v. Leach, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). An abuse of discretion exists when "the record contains no substantial evidence to support the trial court's conclusion that a violation has occurred." State v. Conner, 919 S.W.2d 48, 50 (Tenn. Crim. App. 1995).

The appellant does not challenge the revocation of her probation. Indeed, in the lower court the appellant pled guilty to the probation violation. The appellant's sole issue concerns whether the trial court erred by failing to grant her another alternative sentence after revoking her probationary sentence. As we have stated, it was within the trial court's authority to order the appellant to serve her original sentence upon revoking her probation. See Tenn. Code Ann. §§ 40-35-310 and -311(e); State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Moreover, "an accused, already on probation, is not entitled to a second grant of probation or another form of alternative sentencing." State v. Jeffrey A. Warfield, No. 01C01-9711-CC-00504, 1999 WL 61065, at *2 (Tenn. Crim. App. at Nashville, Feb. 10, 1999). The record supports the trial court's imposition of a sentence of confinement.

III. Conclusion

Finding no error, we affirm the judgments of the trial court.

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NORMA McGEE OGLE, JUDGE